

**REMARKS**

Claims 16-23 and 25-28 are pending in the present application. Claims 1-15 and 24 have been canceled. Claims 25-28 have been added to more particularly define what Applicants regard as their invention. Claim 16 is independent.

**DRAWINGS OBJECTION**

The drawings are objected because they contain blank boxes which must be provided with a suitable legend or label. This drawing objection is respectfully traversed.

Applicants hereby submit substitute drawings, which add appropriate labels and legends to the existing drawings. In view of these replacement drawing sheets providing formal drawings for the above-identified application, Applicants respectfully request reconsideration and withdrawal of the drawing objection.

**ART REJECTIONS**

Claims 1-15 and 24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Sasaoka (USP 6,574,404 B2). Claims 16-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sasaoka. These rejections, insofar as they pertain to the presently pending claims, are respectfully traversed.

Initially, Applicants note that the § 102(e) rejection has been rendered moot by the cancellation of claims 1-15 and 24.

Thus, the sole remaining rejection is a §103(a) rejection based upon Sasaoka.

Although Sasaoka does disclose a chromatic dispersion compensation module, Sasaoka does not disclose or suggest the communications network as recited in independent claim 16. Specifically, Sasaoka does not disclose or suggest a service channel emitter particularly as further recited in claim 16. Indeed, the Office Action admits that Sasaoka does not disclose such a service channel emitter but the Office Action nevertheless concludes that "a service channel as the applicant has defined is nothing more than an intended use of one of the WDM channels already disclosed in Sasaoka and is therefore not considered patentable over the prior art." (December 15, 2003, Office Action, Page 5)

The quoted statement from the Office Action is incorrect for several reasons. First of all, the service channel emitter is a positive claim element recited in pending claim 16. As such, the Office Action must supply a specific prior art reference to teach this specifically claimed feature in order to form a proper rejection. This is clearly not the case as the Office Action has completely failed to provide any evidence that a service channel emitter, particularly as recited in claim 16, is a conventional element.

Still further, the claimed service channel emitter is certainly not just an intended use of a WDM (Wavelength Division Multiplexed) wavelength. Instead, the service channel emitter forms a significant part of the claimed communication network by supplying a service channel optical signal that carries certain data to the claimed control circuit. In turn, the claimed control circuit utilizes the data carried by the service channel to adjust a dispersion characteristic associated with the claimed dispersion compensating module. Thus, the service channel optical signal serves as a control signal pathway such that data may be sent from one part of the communications network to control another part of the communications network.

The specific application of this control utilized by the present invention is chromatic dispersion compensation. In other words, the presently claimed invention utilizes the service channel in order to coordinate chromatic dispersion compensation within an optical communications network. This is much more than simply an intended use as alleged by the Office Action.

The Office Action further alleges that "it would have been obvious to one of ordinary skill in the art at the time of invention that in a system with multiple channels, at least one channel could be reserved for control information, i.e., information other than [sic] data so as to simplify

distribution of control for downstream elements." (December 15, 2003 Office Action, Page 5)

First of all, the Office Action fails to provide any evidence that service channels in general may be reserved for control information. Assuming, *in arguendo*, that the Office Action could supply a general teaching that one of the multiple WDM channels may be reserved for control information, then such a teaching would still be insufficient to render the claimed invention obviousness to one of ordinary skill in the art. In other words, a generalized teaching as to using a service channel for control information is insufficient to teach or suggest the specific application of a service channel to coordinate chromatic dispersion compensation, which is the subject of the presently pending claims. It is emphasized that no such teaching, either general as to service channels or specific as to using a service channel to coordinate chromatic dispersion compensation has been offered by the Office Action. Without such a teaching, the Office Action rejection must fail.

It is further noted that all of the amendments to claim 16 are merely for the purpose of clarifying this claim and not to overcome any of the rejections of record. In other words, certain amendments were voluntarily made to claim 16, but all of these amendments are being made for a purpose other than to address a rejection. Indeed, none of the amended features have

been argued above to distinguish the invention from the applied art. Moreover, the amendments on their face are merely editorial in nature and do not materially effect the scope of the claims.

The same is true for the other amendments made, particularly those made to claims 18 and 23. Indeed, the change from dispersion compensation fiber to module is for term consistency and not to overcome any rejection.

For all of the above reasons, taken alone or in combination, Applicants respectfully request reconsideration and withdrawal of the art rejections.

#### **CONCLUSION**

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of \$110.00 is attached hereto.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees

required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By

  
Michael R. Cammarata, #39,491

MRC/lab  
4450-0117P

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

Attachment(s): 7 Sheets of Drawings

(Rev. 02/12/2004)